IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3943 OF 2005

Mrs.Bhavana Uday Acharya .. Applicant

Versus

State of Maharashtra .. Respondent

Mr.Nitin Pradhan with Ms.S.D.Khot and Ms.Eta Kuttikrishnan for applicant

Mr.R.M.Patne, for intervenor

Mr.K.V.Saste, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 22nd November 2005.

P.C.

. This is an application for anticipatory

bail by original accused No.2 in C.R.No.159 of 2005 registered at Juhu police station.

2. It appears that a complaint was lodged for offences under section 406 and 420 read with 34 I.P.C. mainly because husband of the applicant, Uday Acharya floated companies and invited persons to deposit money therein. Aggrieved investors not getting returns for their investment approached the authorities and thereafter competent courts invoking provisions of Maharashtra Protection of Interest of Depositors Act, 1999 (MPID). Present complaint/ F.I.R. is a fall out of the applicant having been prosecuted along with husband being Director on the Board of company viz., Roha Paper Mills Pvt.Ltd.

3. This matter was adjourned from time to time to enable State to make appropriate submissions with regard to the pending issue of

constitutional validity of the aforesaid enactment and interim protection to the applicant. Adjournments were sought because a Full Bench of this Court struck down the said enactment as being beyond competence of the State Legislature, ultra vires and having no legal effect. Aggrieved by this decision, State has moved Supreme Court. It appears that an application for interim relief was made in SLP/Criminal Appeal and the Supreme Court has passed the following interim order:-

> ". Heard both sides.
>
> . In view of the amount involved in the various transactions and the number of prosecutions launched under the provisions of Maharashtra Protection of interest of Depositors (in Financial Establishments) Act, 1999, we grant interim stay in the following manner.

. In cases where investigations are in progress the prosecuting agency shall continue with the investigation. But there shall not be further prosecutions of the accused persons and as regards pending cases the status quo as on today shall be maintained. It is submitted that in 9 cases already accused persons have been convicted and the convicted persons would be at liberty to apply for bail and the court would be at liberty to pass order granting bail. The interim attachment granted by the competent authority shall subsist until further orders. However, in cases where applications for release of attachment have been filed the same should be disposed of in accordance with law by separate orders. There shall not be sale of attached properties. The Authorities

shall not take any coercive steps to recover the amount under the Act."

4. As far as the prosecution which is pending under the MPID Act all that the Supreme Court order states is that status quo in respect thereof prevailing on the date of the Supreme Court order shall be maintained. In this view of the matter, as far as prosecution under the aforesaid enactment is concerned, which in this case is against Mr.Uday Acharya and the company, status quo will have to be maintained. Attachment on the properties of the company is levied pursuant to the orders passed under the aforesaid enactment, can continue till further orders of the Supreme Court.

5. As far as applicant is concerned, she being house wife and prosecuted for offences punishable under Penal Code, naturally her

application is being considered independently. So considered, it is clear from a perusal of the affidavit in reply filed by Assistant P.I. attached to the Juhu Police station that the applicant was arrayed as accused in the light of the fact that her husband and son formed one company viz., C.U.Marketing and at the instance of the Investors, C.R.No.36 of 1999 was registered with D.N.Nagar police station for offences punishable under I.P.C. as well as MPID Act. Emphasis in the affidavit in reply is on the prosecution launched under MPID Act against the husband of applicant and the company and orders passed by this Court as well as designated/ special court insofar as those offences.

6. The specific case of the applicant in the present application for anticipatory bail is that it is her husband and the son who are conducting the business. They were in charge of day to day

affairs. She states that all documents are in possession and custody of respondents. She is permanent resident of Mumbai and presently her age is 60 years. As far as this aspect is concerned, the affidavit in reply does not deal with the same at all. Interim protection has been granted by this Court since June 2005. It is nobody's case that the applicant is not cooperating with the investigation or she violated the conditions upon which interim protection has been granted. The matter was adjourned only because the State was contemplating moving Supreme Court for obtaining appropriate orders with regard to the prosecution under MPID Act.

7. In the aforesaid circumstances and more particularly in the light of the submissions of Mr.Pradhan that the applicant shall cooperate with the investigating agency and attend police station as and when summoned, it is directed that

applicant will be enlarged on bail in the event of her arrest in connection with aforesaid C.R. in the sum of Rs.50,000/- with one or two sureties in the like amount. She will cooperate with the investigation and attend the office of the investigating authority as and when summoned. Mr.Pradhan states that applicant does not possess passport. Mr.Saste, A.P.P. states contrary. I.O. who is present in Court states that the applicant does not possess a passport. Mr.Pradhan states that in the event the applicant is holding passport she shall surrender the same to the investigating agency i.e. G.B. C.B., C.I.D. Mumbai, Economic Offences Wing.

7. It is made clear that this order would not in any manner affect the prosecution/ respondent’s rights to either proceed against the applicant or her husband and son under MPID Act after appropriate orders are passed in that behalf by the Supreme Court. Hence, following

order:-

i) In the event of the arrest of the applicant in connection with C.R.No.159 of 2005 registered with Juhu Police Station, the applicant shall be enlarged on bail in the sum of Rs.50,000/- with one or two sureties in the like amount.

ii) The bail is granted subject to condition that the applicant will attend the concerned police station as and when summoned.

iii) Bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the

Court or to the police officer/ investigating agency. The applicant shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial

v) This order will enure to the benefit of the applicant only till charge sheet is filed. Thereafter, he will be free to apply to the appropriate court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an

authenticated copy of this order.

(S.C.DHARMADHIKARI, J)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL MISC.APPLICATION NO.4327 OF 2005

Mrs.Bhavana Uday Acharya .. Applicant

Versus

State of Maharashtra .. Respondent

and

Siddharth Raghunath Nikam .. Applicant

Mr.Nitin Pradhan with Ms.S.D.Khot and Ms.Eta Kuttikrishnan for applicant
Mr.R.M.Patne, for intervenor
Mr.K.V.Saste, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 22nd November 2005.

P.C.

. Heard Mr.Patne, learned Counsel appearing for invernor. When the application for anticipatory bail is being considered in the light of the judgement of this Court on validity of M.P.I.D Act, that the matter is pending in Supreme Court as also the applicant being house wife, it is not possible to accept contentions of Mr.Patne appearing for intervenor. The misc.application is dismissed.

(S.C.Dharmadhikari, J)